

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5390 OF 2006

Maharashtra State Electricity
Distribution Co. Ltd. .. Petitioners.
Vs.
Smt.Ambavati Sadashiv Shetty .. Respondent.

Mr.L.M.Acharya for the petitioners.
Mr.S.A.Sawant for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 16TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioners and the respondent.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Sawant, learned counsel waives service for the respondent.

3. The petitioners have challenged the order dated 29.6.2006 passed by the Additional District Judge, Palghar in Miscellaneous Civil Appeal No.13/2006 allowing the appeal partly, filed by the respondent-plaintiff. The operative part of the order reads thus:

"1. Appeal is partly allowed.
2. The order of the learned trial Judge is modified to the following effect:-

. The appellant is directed to pay regularly the current bills to the respondent on or before the given date punctually.

. The dispute regarding the arrears is to be settled by the learned trial Judge after ascertaining the evidence to be recorded in the suit. In the meantime as long as the current bills are paid regularly by the appellant, the respondent is restrained from disconnecting the electricity supply to Hotel Ambika Prasad, Palghar.

. Failure on the part of the appellant to pay the running bill in time would disentitle her from taking benefits of interim relief.

3. Parties to appear before the trial Court on 17.7.2006.

4. Inform the trial Court accordingly."

4. In the appeal, the respondent-plaintiff had impugned ad-interim order dated 21.1.2006 passed by the trial Court on the application at Exhibit-10 filed by the respondent-plaintiff. The respondent-plaintiff had made following prayers in the said application:

. "In the aforesaid circumstances the Plaintiff prays that the defendants be ordered and directed to restore the supply of the Plaintiff's Hotel premises known as Hotel Ambika Prasad @ Pratik.

. The Plaintiff further prays that the pending the hearing and final disposal of the above application defendant be ordered to restore the position of electricity supply as on the date of filing of the above suit and oblige."

5. There is no dispute that the application at Exhibit-10 was filed by the respondent-plaintiff pending hearing and final disposal of the injunction application at Exhibit-5. It appears that the application at Exhibit-5 was disposed of by the trial

Court vide order dated 13.2.2006. From perusal of the impugned order dated 29.6.2006, it is clear that the Additional District Judge has not made any reference to the order dated 13.2.2006 passed on the application at Exhibit-5 though, as informed by the learned counsel for the petitioners, it was brought to the notice of the court. The order which was impugned in the miscellaneous civil appeal no.13 of 2006 had merged in the order dated 13.2.2006 after the application Exhibit-5 was disposed of. It is thus clear that the impugned order was passed in the miscellaneous civil appeal which had become infructuous. It may be noted that the final order dated 13.2.2006 was passed on Exhibit-5 has not been challenged by the petitioners so far. In the circumstances the impugned order cannot be sustained and must be set aside. Hence I pass the following order:

. The impugned order dated 29.6.2006 is quashed and set aside.

. Rule is, accordingly, made absolute.

(D.B.Bhosale, J.)